



OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN

GROVER SELLERS  
ATTORNEY GENERAL

Honorable E. N. Jones, President  
Texas College of Arts and Industries  
Kingsville, Texas

Dear Sir:

Opinion No. 0-6993  
Re: Authority of Board of  
Directors of Texas College  
of Arts and Industries to  
borrow money for purchase  
and erection of housing  
units.

This is in response to the request contained in your letter of December 14, 1945, for the opinion of this department upon the authority of the Board of Directors of the Texas College of Arts and Industries to borrow a sum approximately Forty Seven Thousand Dollars (\$47,000.00) . . . for purposes of setting up a proposed Veterans housing project as an emergency measure to meet the existing serious shortage."

Supplementing your letter by conference with the Attorney General, you advised that it is proposed to borrow this sum of money from a local bank by revenue note. The bank is concerned with the authority of the Board to assume this character of obligation and also with the question of whether the Board can make payments on the note from its local or institutional funds in the event that revenues from the housing project are inadequate.

The following statutes are pertinent to the question presented:

Article 2603c, Sec. 1.

" . . . the Board of Directors of the College of Arts and Industries are hereby severally authorized and empowered to construct or acquire through funds or loans to be obtained from the Government of the United States, or any agency or agencies thereof, created under the National Recovery Act,

or otherwise created by the Federal Government or from any other source private or public, without cost to the State of Texas, and accept title, subject to such conditions and limitations as may be prescribed by each of said Boards, dormitories, kitchens and dining halls, hospitals, libraries, student activity buildings, gymnasias, athletic buildings and stadia, and such other buildings as may be needed for the good of the institution and the moral welfare and social conduct of the students of such institutions when the total cost, type of construction, capacity of such buildings, as well as the other plans and specifications have been approved by the respective Governing Boards; provided, however, that the Legislature shall never make an appropriation out of the general fund of this State, either in the regular appropriation bill or in a supplemental or emergency appropriation bill, for the purpose of equipping or for the purpose of purchasing and installing any utility connections in any of the buildings erected under and by virtue of the provisions of this Act."

Sec. 2.

" . . . .

"That said Boards are further authorized to make any contract with reference to the collection and disposition of the revenues derived from any building so constructed in the acquisition or construction, management, and maintenance of any building or buildings acquired hereunder. In reference to the acquisition of student activity buildings, stadia, gymnasias, and all character of athletic buildings, said Boards are authorized also to make contracts with reference to the collection and disposition of revenues to accrue to such respective institutions from activities, athletic events, and games in which said respective institutions participate away from said institutions, as well as

at said institutions; and in anticipation of the collection of such revenues, and for the purpose of paying the cost of the construction or acquisition of said building or buildings and grounds, said Boards are severally empowered by resolution to authorize, sell, and deliver its negotiable bonds or notes from time to time and in such amount or amounts as it may consider necessary. The fees and charges so fixed for the use of any such building or buildings shall not be collected after payment in full shall have been completed for the building or buildings for which said fees shall be pledged. Thereafter the right of said respective Boards to fix charges and fees shall depend on laws other than this Act as hereby amended. Any bonds or notes issued hereunder shall bear interest at not to exceed six (6%) per cent per annum, and shall finally mature not more than forty years from date. (Emphasis supplied.)

Sec. 3. Subject to the above restrictions, each of said Boards is given complete discretion in fixing the form, conditions and details of such bonds or notes. Any bonds or notes issued hereunder shall not be an indebtedness of the State of Texas, but shall be payable solely from the revenues to be derived from the operation of said buildings; provided that such bonds may be refinanced by the said Boards whenever such action is found by the Board to be necessary.

" . . . .

Sec. 4.

"Each of said Boards is authorized and empowered to pledge all or a part of such revenues to the payment of such bonds or notes, and to enter such agreements regarding the imposition of sufficient charges and the collection, pledge and disposition of such revenues as it may deem proper. In all cases where

existing buildings or structures are repaired or enlarged or to which additions are constructed, the board shall also have the power and are hereby authorized to pledge, incumber and/or dispose of the net revenues of such existing buildings or structures as well as to pledge, incumber and/or dispose of the revenue derived from the additions or improvements to such structures.

" . . . .

"Each of said boards is hereby authorized and empowered to pledge the unused part of any revenues from self-liquidating buildings for the construction of any other buildings such board may deem necessary. Each of said boards is authorized and empowered to pledge the rentals of dormitories, cottages, or other income bearing property for the repair, enlargement, or construction of any other buildings such board may deem necessary."

#### Article 2909a.

##### Section 1.

" . . . . . the Board of Directors of the College of Arts and Industries are hereby authorized and empowered to erect and equip, and to contract with any person, firm or corporation, for the erection, completion and equipping of dormitories, cottages, or stadiums, to be erected either on the campus or real estate then owned by said colleges, or on other real estate purchased or leased for the purpose, and the said Boards of Directors are hereby expressly authorized to purchase, or lease, additional real estate for such purposes, provided said Institutions have sufficient surplus from local funds, but not exceeding twenty-five (25%) per cent of the total for any fiscal year, to pay cash for any purchase of land; or the purchase of land is made from funds derived from the sale of revenue bonds or notes. The bonds or notes authorized herein are to be paid solely from the revenues of the dormitories, cottages and stadium, and shall never be charged against the State nor any appropriation made

Hon. E. N. Jones, page 5

by the State nor shall any portion of said appropriation ever be used for the payment of said notes or bonds; nor shall any local or institutional funds in excess of twenty-five (25%) per cent of the total for any calendar year ever be used for the payment of said notes or bonds. It being the intention of the Legislature to authorize the payment of said notes and bonds solely from revenues derived from the improvements authorized herein and an emergency to be supplemented from local funds not exceeding twenty-five (25%) per cent for any fiscal year.

Sec. 3.

"In payment for the erection, completion and equipping of such dormitories, cottages and stadiums, and the purchase of the necessary sites thereto, the Boards aforesaid are further authorized and empowered to issue their obligations in such sum or sums and upon such terms and conditions as to said directors may seem advisable, and as security for the payment thereof to pledge the net rents, fees, revenues and incomes from the improvements to be erected hereunder. Any bonds or notes issued hereunder shall bear interest at the rate not to exceed six (6%) per cent per annum and shall finally mature not more than twenty years from date. (Emphasis supplied.)

Sec. 4.

"The aforesaid Boards are hereby authorized and empowered to pledge the unused part of any revenues from self-liquidating buildings for the construction of additions to said buildings or the construction of any other buildings and the purchase of the necessary sites thereto such Boards may deem necessary, provided that any subsequent issue of revenue bonds or notes shall be a second lien on said net revenues, rents, fees and incomes and shall be inferior to any outstanding revenues, bonds or notes which are secured by a pledge of said net revenues, rents, fees and incomes.

## Sec. 5.

"The Boards aforesaid are hereby authorized and directed to establish and maintain such schedule of rates, fees and charges for the use of the facilities afforded by its dormitories, cottages and stadiums, and the revenue from the athletic fields and stadiums, which rates, fees and charges shall be in an amount at least sufficient to pay the operating and maintenance charges thereof and to pay the principal and interest representing the indebtedness against said revenues, rents, fees and incomes.

## Sec. 7.

"All revenue bonds shall be examined and approved by the Attorney General of the State of Texas; and the State Auditor shall approve such revenue bonds or revenue notes after an examination of revenues which shows a reasonable prospect of adequate rents, income, fees or charges to pay principal and interest, and all approved bonds shall be registered in the office of the Comptroller of Public Accounts of the State of Texas."

It will be noted that under the provisions of Article 2603e, the Board is authorized to issue its revenue note for the purposes set forth in your letter, the statutory conditions being that the note shall bear interest at not to exceed six per cent (6%) per annum, and shall finally mature not more than 40 years from date. Interpreting this statute, Opinion No. 0-1694, of this department, held that under the provisions of Article 2603e, the Board of Regents of the State Teachers College of Texas was authorized to execute a \$10,000 note, payable in 18 years, for the construction of a post office building on the main campus of North Texas State Teachers' College. The opinion further held that the Board of Regents was not empowered to pledge local funds which may be available several years in the future for the payment of this note. The opinion pointed out that Art. 2909a did not apply because of the type of building desired to be erected.

Article 2909a, however, does apply to "dormitories" or "cottages" which are the class of buildings your Board desires to contract for and erect. It is noted that this Article authorizes your Board to issue its revenue note, the conditions being (Sec. 3) that such note shall bear interest at a rate not to exceed 6% per annum and shall finally mature not more than 20 years from date. In Opinion No. 0-1273, this department held that Section 1 of Article 2909a ". . . expressly provides that in the event the revenues derived from such improvements are insufficient to meet the annual debt requirements, then and in that event the funds may be supplemented from local funds not exceeding 25% for any fiscal year...." Opinion No. 0-6836 advised the Board of Regents of the State Teachers' Colleges that North Texas State Teachers College was authorized to retire revenue bonds issued for the construction of certain college buildings by using a surplus in its local fund.

In passing, we call your attention also to Article 2654d which provides that your Board of Directors may retain control of all local funds and place the same in a local depository. By Section 8a of this Statute, such control is made subservient to the will of the Legislature, as expressed in its biennial appropriation bill. In this connection, we point out that the provisions of the appropriation bill for the educational institutions of the State, as enacted by the 49th Legislature, appropriates such local funds for "improvements" and other purposes. See Chapter 377, Acts of the Regular Session of the 49th Legislature, p. 804.

You are therefore respectfully advised that, in the opinion of this department, your Board may proceed under either Articles 2909a or 2603a to effect the loan in question. Provisions for its payment may be made as provided in either of said Articles.

APPROVED DEC 17 1945

*James D. Smullen*  
ATTORNEY GENERAL OF TEXAS

JDS:rt

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By *James D. Smullen*  
Jas. D. Smullen,  
Assistant.

